EUROPEAN COMMISSION

Brussels, 29.06.2012
C(2012) 4449 final

Subject: State Aid SA.34897 (2012/N) – Germany
Prolongation of the reactivated German rescue scheme for financial credit institutions in Germany

Sir,

I. PROCEDURE

(1) By decision of 12 December 2008\(^1\) in case N 625/2008 the Commission raised no objection against the granting of State aid for six months on the basis of the German bank rescue scheme in case N 625/2008 concerning the measures granted to financial institutions under the Financial Market Stabilization Law (‘Finanzmarktsstabilisierungsgesetz’). The Financial Market Stabilization Law was in effect until 31 December 2010, during which time the Commission approved its prolongation on three occasions in its decisions of 22 June 2009 in State aid case N 330/2009\(^2\) of 17 December 2009 in State aid case N 665/2009\(^3\) and of 23 June 2010 in State aid case N 222/2010\(^4\).

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\(^4\) Commission decision in case N 222/2010 of 23.6.2010 on the third prolongation of the German rescue package for credit institutions in Germany, OJ C 178 of 3.7.2010, p.3.

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(2) By decision of 5 March 2012\(^5\) in case SA 34345 (2012/N) the Commission approved a reactivation of that scheme under the 'Second Financial Market Stabilization Law' ('Zweites Finanzmarkstabilisierungsgesetz') until 30 June 2012.

(3) By notification of 29 May 2012, Germany requested a prolongation of the scheme for further six months, until 31 December 2012. Germany also provided a letter from Deutsche Bundesbank.

(4) On 4 June 2012 Germany, for reasons of urgency, exceptionally agreed to the adoption of the decision in the English language.

II. GENERAL DESCRIPTION OF THE REACTIVATED SCHEME

(5) On 1 March 2012 the 'Second Financial Market Stabilization Law' entered into force. It is an amendment to the initial Financial Markets Stabilization Law and its subsequent extensions. By that law, Germany reintroduced the entirety of the measures which had initially been introduced in 2008 and had remained in place until 31 December 2010 in order to counter a possible threat to the financial system in a timely and effective manner, where private solutions for strengthening the capital base fail.

(6) Like the preceding law, the objective of the 'Second Financial Market Stabilization Law' is to support financial institutions in order to stabilise the German financial market, in particular in the light of the recent government debt crisis.

(7) As in the initial scheme, access is reserved for companies in the financial sector, i.e. essentially banks and insurance companies. In addition to German financial institutions, subsidiaries of foreign financial institutions established in Germany are eligible under the scheme.

(8) The reactivated scheme allows for the following types of measures:

A. Recapitalisation of companies: Such measures would concern participation in companies in the financial sector, in the form of acquisition of shares, silent participations or other instruments constituting equity up to a maximum of EUR 80 billion.

B. Risk assumption: A joint ceiling totalling EUR 80 billion applies to risk assumption measures and recapitalisation measures. Within that joint ceiling, a total of EUR 80 billion is available for the temporary assumption, whether by acquisition or otherwise, of the risk associated with the risk positions acquired by companies in the financial sector before 1 December 2011, including in particular receivables, securities, derivative financial instruments, rights and obligations under loan commitments or warranties and participations, in each case including the related collateral.

C. **Guaranteeing of liabilities:** Provision, in return for an appropriate remuneration, of a guarantee up to an amount of EUR 400 billion for newly issued bonds and liabilities of companies in the financial sector.

(9) The 'Second Financial Market Stabilization Law' remains largely unchanged in comparison with the legislation introduced in October 2008. However, its application is substantially different as regards the remuneration and the conditions for recapitalisation measures and guarantees for liabilities. Details are further explained in Section 4 a) and b) of the decision of 5 March 2012.

(10) That law also reintroduced the mechanism for asset relief through the possibility for institutions to transfer securities to a special purpose vehicle (“SPV”) model, as previously authorized by decision of 31 July 2009 in case N 314/2009. It extended the scope of that mechanism to cover also securities other than structured securities, for which no or only limited case practice exists in Germany. Therefore, that measure was not part of the notification of the reactivated scheme and was not assessed in the decision of 5 March 2012. Instead, Germany has committed to individually notify those measures.


(12) Hereinafter a summary of the commitments for the reactivated scheme:

a) The German authorities have given a commitment that only financial institution with a core capital ratio (Tier-1 ratio) of at least 7% can avail themselves of a guarantee provision or a risk assumption – also allowing for a recapitalisation pursuant to Section 3 of the Financial Markets Stabilisation Fund Regulation (FMStIFV). If the financial institution does not have a core capital ratio of 7% at the time the measures are approved, a guarantee provision or an assumption of risks will only be possible if the owners of the financial institution provide a credible commitment that a core capital ratio of 7% will be achieved within a period of three months following the measures being approved, and take all necessary steps to that end.

b) The German authorities undertake to ensure that financial institutions may take advantage of guarantees and risk assumption only until the agreed

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6 See footnote 5.
7 That is, the assumption of guarantees for securities outsourced to SPVs.
9 In any event, Germany commits that beneficiaries will ensure that their capital ratio will not fall below the regulatory minimum requirements plus 2%.
10 See para 15 of the decision of 5 March 2012.
deadline for achieving the above-mentioned core capital ratio, and that suitable measures are taken if the owners do not fulfil their obligation, in particular, to submit a restructuring plan within six months. That commitment also applies to financial institutions which are not credit institutions.

c) The German authorities have given a commitment that the importance of financial institutions for financial market stability within the scope of application of the FMStG will be assessed in particular in the light of their balance-sheet total, the level of deposits, their part in the payment system, and their general importance for maintaining confidence in the stability of the financial market.

d) The German authorities undertake to ensure that any discrimination against individual financial institutions should be avoided, regardless of whether it concerns a subsidiary of a financial institution with its headquarters in a Member State or not.

e) With regard to conversion into ordinary shares for recapitalisation measures, the German authorities commit to ensure that the conversion will take place at market-adequate conditions. Therefore, the purchase price may not be higher for the Financial Market Stabilisation Fund ('SoFFin') than for other shareholders if a conversion takes place in the context of a capital increase and third parties also obtain shares. If other shares are not obtained by third parties, a discount will be required in line with the German stock corporation law.

g) Germany also commits to ensure that an alternative coupon satisfaction mechanism (ACSM) exists for hybrid capital instruments with profit-dependent remuneration considering that those instruments keep their rating as core or, respectively, supplementary capital after the Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms enters into force. If a recapitalisation is carried out using a profit-dependent remunerated capital instrument without an ACSM, the remuneration will be determined on a case-by-case basis and Germany will seek the approval of the Commission for the detailed arrangements ensuring a proper remuneration of the instrument.

h) The German authorities have committed that financial institutions supported by a recapitalisation measure will present a restructuring plan six months after the recapitalisation if the beneficiary does not undertake to buy back the shares within six months. Regarding financial institutions for which the Commission already approved a restructuring plan, on Commission's request Germany will present a restructuring plan to the Commission also

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11 See para 15 of the decision of 5 March 2012.
12 See para 14 of the decision of 5 March 2012.
13 See para 14, last sentence of the decision of 5 March 2012.
14 See para 22 of the decision of 5 March 2012.
within a shorter period of time, but not shorter than three months. Finally, if
State aid is provided for a second time, the German authorities continue to
commit to individually notify the State aid.\textsuperscript{16}

\begin{itemize}
\item[i)] Germany commits that guarantees with a maturity of more than three years
will be limited to one-third (EUR 133 billion) of the overall budget of the
reactivated scheme.\textsuperscript{17}
\item[j)] The German authorities also commit that a restructuring or liquidation plan
will be presented by a financial institution within six months in case a
guarantee is called\textsuperscript{18} Moreover, a viability review will be presented by every
financial institution that is granted guarantees on new or renewed liabilities or
renewed liabilities
\item[k)] The German authorities have given a commitment in the context of Section
4 of the FMStFV that an appropriate remuneration will be paid to SoFFin for
the liquidity made available through the risk assumption which is based on
the cost of liquidity plus the guarantee premium.\textsuperscript{19}
\item[l)] The German authorities have committed that the duration of the risk
assumption will not exceed that of the risk positions and that, should it prove
impossible to effect redemption or compensatory payments for losses of
market value upon expiry of the agreed term, a restructuring plan will be
presented within six months in so far as no such plan has yet been presented\textsuperscript{20}
\end{itemize}

\begin{itemize}
\item[(13)] For the present prolongation Germany reiterates the following commitments
already provided earlier:
\item[(a)] Germany confirms to base the minimum guarantee fees on a standard
reference period from 15 May 2009 to 15 May 2012, as indicated in the
Annex.
\item[(b)] Germany commits to comply with the new reporting obligations under
the 2011 Prolongation Communication.\textsuperscript{21}
\item[(c)] Germany commits to present semi-annual reports on the operation of the
scheme.
\end{itemize}

\section*{III. The position of Germany}

(14) The German authorities request a prolongation of the rescue scheme for a
further period of six months; i.e. from 1 July 2012 until 31 December 2012. The
other conditions of the reactivated scheme remain unchanged. The prolongation

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\begin{tabular}{l}
\textsuperscript{16} See para 28 of the decision of 5 March 2012, \\
\textsuperscript{17} See para 37 of the decision of 5 March 2012, \\
\textsuperscript{18} See para 40,41 of the decision of 5 March 2012 \\
\textsuperscript{19} See para 46 of the decision of 5 March 2012. \\
\textsuperscript{20} See para 47 of the decision of 5 March 2012. \\
\textsuperscript{21} See para 22 of the Communication from the Commission on the application, from 1 January 2012, of State aid
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does not involve an increase in the overall budget of the scheme already approved on 5 March 2012.

(15) The German authorities accept that the notified prolongation of the reactivated scheme would contain elements of State aid. However, the German authorities are of the view that the proposed prolongation is compatible with the internal market on the basis of Article 107(3)(b) TFEU as it is necessary in order to remedy a serious disturbance in the German economy.

(16) The Deutsche Bundesbank submitted a letter (dated 29 May 2012) further supporting the need for the proposed prolongation to safeguard the stability of the financial system in Germany, because prevailing market conditions do not allow for a termination of the reactivated scheme.

Assessment of the previous scheme

(17) In its initial approval decision of the reactivated rescue scheme the Commission concluded that the measures comprised under that scheme constitute State aid within the meaning of Article 107(1) TFEU. However, it found that the measures were compatible with the internal market under Article 107(3)(b) TFEU because they were apt to remedy a serious distortion of the German economy. To that end the Commission had assessed the appropriateness, necessity and proportionality of the measures.

Compatibility of the proposed prolongation of the reactivated rescue scheme

(18) Due to the continuation of the sovereign crisis, threats for the stability of financial markets persist. The information provided by Deutsche Bundesbank confirms the need to address the on-going difficulties caused by the sovereign crisis that also banks in Germany continue to experience.

(19) A premature termination of the measure could therefore have a negative impact on the financial markets and the economy, given the volatility and susceptibility to failure of the financial markets situation caused by the sovereign crisis. As a consequence, the prolongation of the reactivated scheme for a further six-month period is considered as appropriate and necessary to remedy the threat of a serious disturbance of the German economy.

(20) Further, the Commission notes that all major terms and conditions for the scheme approved on 5 March 2012 will remain unchanged. Only the basis for the minimum guarantee fees has been recalculated. The Commission considers therefore on the basis of the commitments the measures being in line with the Commission’s recent guidance provided in the 2011 Prolongation Communication.

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22 With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.
(21) In assessing the request for the prolongation of the measures forming part of the rescue scheme (recapitalisation scheme, guarantee scheme, risk assumption) the Commission has to balance their positive effects for financial stability with the distortions of competition and the delay in the return to a normal functioning of the financial markets that the prolongation addresses.

(22) As regards the necessity of the guarantee scheme, the Commission welcomes the fact that for the guarantee scheme, a limitation to new debt and an application for a limited period; i.e. until 31 December 2012, is foreseen. The same applies to the risk assumption by the State which may take place only until 31 December 2012.

(23) In that context, the Commission also notes positively that according to the intermediary report on the operation of the reactivated scheme submitted by the German authorities of 4 April 2012, that from the period 1 January 2012 to 31 March 2012 SoFFin did not grant any stabilisation measures and, hence, did not issue bonds under the scheme.

(24) On the basis of the above, the notified prolongation of the reactivated scheme does not alter the Commission's previous assessment in its decision of 5 March 2012\(^23\).

(25) Thus, in view of the commitments reiterated above the prerequisites for the compatibility of the German rescue scheme guarantee that have been established by the Banking Communication\(^24\), the 2011 Prolongation Communication\(^25\) and the Commission's decisional practice are met. The notified prolongation therefore complies with the requirements set out above and is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

IV. DECISION

The Commission concludes that the prolongation of the reactivated German rescue scheme is compatible with the internal market for the period from 1 July 2012 until 31 December 2012. The Commission raises therefore no objections to it. The Commission recalls that the measure is limited in duration until 31 December 2012.

The Commission notes that for reason for urgency Germany exceptionally accepts the adoption of the decision in the English language.

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\(^23\) See footnote 5.
\(^25\) See footnote 9.
Your request specifying the relevant information should be sent by registered letter or fax to

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Yours faithfully,
For the Commission

Joaquin ALMUNIA
Vice-President
Annex

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* Confidential information.